

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

UNITED STATES POSTAL SERVICE

and

Case No. 34-CA-12912

**NATIONAL ASSOCIATION OF LETTER
CARRIERS MERGED BRANCH NO. 19**

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Counsel
Wendy A. Blanchard, Esq., Counsel for the
Respondent

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in Hartford Connecticut on various days in December 2011 and January 2012. The charge and the amended charges in this case were filed on February 8, April 27 and May 27, 2011. The Complaint was issued on June 29, 2011 and thereafter amended and revised a couple of this at the Hearing. Also, the General Counsel, with the filing of the Brief, withdrew a number of other allegations. In substance, the Complaint as amended alleges that on various dates, the Respondent has either refused or has not timely furnished to the Union, information relevant to a series of grievances at two post offices in Connecticut.

The General Counsel also assert that in light of the violations here and therefore its non-compliance with a prior Formal Settlement Agreement, an Order should be issued requiring the Respondent to (a) post a notice at all of its main, branch and station facilities in its New Haven, Connecticut Post Office and (b) to send a company of the Board Order to all of its supervisors at the aforesaid facilities. ¹

It should be noted that all of the underlying grievances prompting these information requests have been resolved either by agreement between the Union and the Postal Service or through arbitration, before the commencement of this hearing. In one instance, the basic subject matter giving rise to multiple grievances and information requests was arbitrated in a case that the Union ultimately lost. In most of the other instances, the parties agreed to resolve the grievances in favor of the Union's position. Therefore, the General Counsel is not seeking an Order that would require the Postal Service to actually furnish any of the documents requested.

¹ General Counsel Exhibit 67 is a Formal Settlement Stipulation dealing with two cases involving three other post offices in Connecticut. Those case involved allegations that the Respondent failed to provide information to this Union. Pursuant to the settlement, the Board issued a Decision and Order dated June 25, 2009 and the Court of Appeals entered a Judgment enforcing the Board's Order on January 6, 2010.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS AND CONCLUSIONS

I. Jurisdiction

The Respondent is subject to the jurisdiction of the National Labor Relations Board pursuant to Section 1209 of the Postal Reorganization Act of 1970. It is conceded and I find that the National Association of Letter Carriers, Merged Branch 19 is a labor organization as defined in Section 2(5) of the Act.

II. The Alleged Unfair Labor Practice

(a) The Legal Standard

Pursuant to Section 8(a)(5), each party to a bargaining relationship is required to bargain in good faith. And part of that obligation is that both sides are required to furnish relevant information upon request. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 (1967). Requests for information may come in essentially two contexts; **(a)** bargaining for a collective bargaining agreement or **(b)** processing a grievance. In relation to information sought during the term of an existing contract, a Union's responsibilities include: **(a)** monitoring compliance and effectively policing the collective-bargaining agreement, **(b)** enforcing provisions of a collective-bargaining agreement, and **(c)** processing grievances. *American Signature, Inc.*, 334 NLRB 880, 885 (2001).

If the information sought relates to the processing of a grievance, (or potential grievance), the legal test is whether the information is relevant to the grievance and the determination of relevancy is made based on a liberal, discovery type of standard. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 437 (1967); *Knappton Maritime Corporation*, 292 NLRB 236 (1985).

Where there is a request for relevant information, the employer (or Union), is obligated to respond with reasonable dispatch. *NLRB v. John S. Swift Co.*, 277 F.2d. 641 (7th Cir., 1960); *Woodland Clinic*, 331 NLRB 735, 737 (2002) (seven week delay); *Bituminous Roadways of Colorado*, 314 NLRB 1010, 1014 (1994) (six week delay); *Civil Service Employees Association, Inc.*, 311 NLRB 6, (1993), (ten week delay in providing information); *EPE Inc.*, 284 NLRB 191, 200, (1987), (six month delay in providing information); *Tennessee Steel Processor*, 287 NLRB 1132 (1988); *U.S. Postal Service*, 276 NLRB 1282, 1288 (1985); *Quality Engineered Products*, 267 NLRB 593, 598 (1983), (one month delay); *Aeolian Corp.*, 247 NLRB 1231, 1244 (1980) (three week delay).

Of course, what is reasonable or unreasonable may depend on all of the circumstances and is not determined by some mathematical formula. In *West Penn Power Co.*, 339 NLRB 585, 587, (2003), the Board stated:

In determining whether an employer has unlawfully delayed responding to an information request, the Board considers the totality of the circumstances surrounding the incident. Indeed, it is well established that the duty to furnish requested information cannot be defined in terms of a per se rule. What is required is a reasonable good faith effort to respond to the request as promptly as circumstances allow. In evaluating the promptness of the response, the

Board will consider the complexity and extent of information sought, its availability and the difficulty in retrieving the information.

Finally, the Board has held that even where the underlying grievance has been resolved, this does not moot allegations that a failure to furnish or a failure to timely furnish information constitutes a violation of Section 8(a)(5) of the Act. See *United States Postal Service*, 339 NLRB 1162, 1166, 1168 (2003) and *Grand Rapids Press*, 331 NLRB 703, 709 (1991).

(b) The facilities involved

The loci of these cases are two post offices in Connecticut; one called the Mt. Carmel Facility and the other located at Dixwell Avenue in Hamden. Both of these are branches of the New Haven Post Office. (The New Haven Post Office has eight or nine branches). The New Haven Post Office is, in turn, part of the Connecticut Valley District which encompasses Connecticut, Rhode Island and western Massachusetts.

At the time of these events, the Mount Carmel facility had an acting manager, Alejandro Soto, who supervised about 30 employees of whom 17 were letter carriers.² He was assisted by one other supervisor who at various times was either Kathy Camerato or John Greco. The letter carriers at this office delivered on average, from 380 to 800 pieces of mail per day on 17 routes. (One route for each carrier). The Union's representative at this location was David Fruin who agreed that with the small staff and the limited number of manager/supervisors, the bosses were very busy. For example, the testimony showed that Mr. Soto generally worked from about 6:00 a.m. to 4 or 4:30 p.m. There is no question but that part of the managers' job functions is to deal with union grievances and to provide information as needed. There is also no question that another, (and perhaps as significant), part of his or her job is to make sure that the mail is delivered on time.

The Dixwell Avenue facility is also called the Hamden facility. It has about 25 letter carriers and at the time of these events the acting manager was Sharon Bernardo. At the time, Lillian Joseph was the supervisor and another supervisor, Denis Wright, was on a leave of absence.³ The testimony was that although this office normally operated with one manager and two supervisors, it was operating with only a manager and one supervisor at this time. Joseph testified that during a period from December 2010 through February 2011, there were five vacant letter carrier positions and this put a lot of pressure on the post office.

At the time of these events, Jess Friedman and Robert Vitale were the union shop stewards at Hamden. Friedman became a shop steward in December 2010 and Vitale became a shop steward in November 2010. Thus, although both had long careers as letter carriers, they were rather inexperienced as union shop stewards.

It is also noted that the work of delivering mail has a somewhat seasonal aspect. That is, there is more work that has to be done from Thanksgiving through Christmas. Much of this consists of advertising circulars that are delivered during the Christmas shopping period.

² It seems that at the time of these events, Soto was the permanent manager of another branch in Westville, Connecticut and was temporarily assigned to be the acting manager at the Mount Carmel facility.

³ Previously, Joseph had been a supervisor at the East Haven branch.

Because many of the information requests refer to TAC rings, this is described as follows. Each post office facility has electronic devices that act as a kind of electronic time clock. The employees are issued swipe cards that they use when they enter the facility; when they take breaks; when they leave the facility to deliver mail; when they return to the facility with new mail; and when they leave to go home at the end of the work day. When a swipe is made with the card, this is called a TAC ring and an electronic record is made of each and every TAC ring made. These rings are entered into a data base and it is possible, at a later time, through the appropriate computer program, to obtain and print out a TAC ring report of the actual swipes made during any given period of time by any particular employee or group of employees. Of course, if an employee is absent he would not have swiped his card and therefore a TAC ring report would not indicate any TAC rings on his part for the day or days of his absence. There is however, a related data base that shows for example, when an employee is on leave, on vacation or out sick. These situations are represented by codes and this information is also obtainable via a computer program.

(c) Provisions of the Collective Bargaining Agreement

The letter carriers are represented by the National Association of Letter Carriers pursuant to a national collective bargaining agreement. Branch 19 is, in effect, a local union affiliated with the national organization and is responsible for the day to day administration of the contract. The collective bargaining agreement itself is a gigantic and complex document and therefore the parties have agreed to rely on what is called the Joint Contract Administration Manual (JCAM) as a “guideline” for interpreting the contract.

General Counsel Exhibit 2(b) is an excerpt of the collective bargaining agreement containing the grievance and arbitration provision.

The first step of the procedure is called “Informal Step A” and involves the shop steward and the local supervisors of a particular facility. Typically, the process is initiated when an employee complaint is brought to the shop steward who may ask for information from the manager to investigate the grievance. Typically when information is requested, a request is also made by the shop steward for company time to review the information requested and to conduct interviews. This means that if granted in accordance with the contract’s terms, the shop steward, who is also a letter carrier, will be given an amount of company paid time to review the information. This often means that the shop steward will obtain overtime pay because with the limited number of letter carriers available, he or she will still be needed to deliver mail during his or her regular hours.

Within 14 days, the steward will typically discuss the grievance with the local manager and this is described as “Informal Step A”. Grievances may be classified as individual or class grievances; the latter if the grievance involves more than two employees. The Union is required to file a formal grievance by 14 days after the incident has occurred or from the date that the Union had a reasonable basis for discovering that the incident occurred. The parties may and typically do extend the 14 day time deadline at this level of the procedure by mutual consent.

If there is no resolution of the grievance at Informal Step A, (typically between the steward and the local manager), the steward can appeal the matter to the next level which is designated as Formal Step A. In this circumstance, the steward will typically write up a formal grievance describing the incident and the alleged contract violation and forward it to Union’s branch president. Also, he will forward all documents received from the local manager in response to any information requests. The Formal Step A level involves a different set of union

and management representatives. These people are given the task of reviewing the grievance and all forwarded material. The Union's representative at this step is the Union's branch president or his designee. The representative for the Respondent is the Postal Service's installation head. At this second step of the grievance procedure, the representatives can take one of the following options: (1) They can resolve the grievance at this step. (2) If their review of the file reveals a lack of relevant information, they can agree to remand the matter to the local steward and supervisor for more information. (3) They can disagree on the merits and refer the grievance up to Formal Step B. Although there is a 14 day deadline, the parties can and typically do extend the deadline. Similarly, if they decide to remand the matter to the first step for more information, they will, as a matter of course, extend the deadline.

Under the terms of the contract, the Union is entitled to receive from the employer at the Formal Step A meeting, any documents or statements of witnesses. Also, in non-discharge cases, the parties can mutually agree to jointly interview witnesses at the Formal Step A meeting. In discharge cases, either party can present two witnesses at the meeting.

If a grievance is not resolved at the Formal Step A level, it can be appealed to what is called the Formal Step B level. At this third step, each side has representatives who are appointed by the Postal Service and the NALC at the national level. Thus, a case involving a Connecticut grievance may be heard by representatives from another part of the country. The files are forward to these individuals who are authorized to resolve the grievance and if they disagree, the next step would arbitration. As is the case at the lower levels of the procedure, if more time is needed, the representatives will typically extend the grievance deadlines. If they agree on a resolution, a formal decision is reached and distributed. Alternatively, the parties may reach an impasse whereupon the Union can file for arbitration. Finally, at this level as well, the representatives may remand the grievance with specific instructions or hold the decision in abeyance pending resolution of a representative case or national interpretive case. (This will become important when discussing the issues surrounding the express mail grievances).

The final step of the grievance procedure is arbitration. And as noted above, except for a grievance involving express mail that was arbitrated, all of the other grievances involved in this case were ultimately resolved in the grievance process by mutual agreement.

The collective bargaining agreement at Article 31, has a provision relating to information requests. This section gives union shop stewards the right to review and obtain documents, files and other records in addition to the right to interview a grievant, supervisors and witnesses. The contract states that when an information request is made, the request "shall state how the request is relevant to the handling of a grievance or potential grievance." It also provides that: "Management should respond to questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for review and/or produce the requested documentation as soon as reasonably possible." In addition, the contract gives the steward the "right to obtain supervisors' personal notes of discussions held with individual employees... if the notes have been made part of the employee's Official Personal folder or if they are necessary to processing a grievance or determining whether a grievance exists."

In its interpretation of the contract provision relating to information requests, the JCAM states that the Union has to give only a reasonable description of the information requested but cannot conduct a "fishing expedition." As to the cost of producing documents, the JCAM states that there would be no charge to the Union for the first 100 pages.

It should be noted that as one goes from step to step in the grievance procedure, (short of arbitration), the experience level of the respective representatives goes up too. The people designated at the higher levels by the union and management are more experienced and have greater expertise in their knowledge of the labor agreement and post office procedures. This is important because local shop stewards such as Jess Friedman and Robert Vitale, who recently had assumed these positions, were not as knowledgeable as Fruin who represents the Union at the Formal Step A level and at times at the Formal Step B level. This is significant because the collective bargaining agreement itself is a masterpiece of length and complexity. As noted above, the parties have found it necessary to summarize the contract in a separate document that perhaps might be understood by the people who have to live with it on a day to day basis.

The people who are appointed by their respective parties to handle grievances, particularly at the second and third steps have had many years of experience with the Postal Service and many years of experience in dealing with contractual disputes. The evidence leads me to conclude that these individuals know a lot better than I would what information would be relevant to any particular grievance.

The evidence shows that there were situations when information requested by a local steward was not turned over by local management. But in each case, when the information was available, the representatives of the Union and the Employer at the Informal Step A level agreed to remand the grievance to the lower level with a directive that the information be provided. And this directive was carried out. Moreover, as to the grievances discussed in this case, many were resolved at the lower steps after information had been provided and a few others had to be resolved either at the Formal Step A or Formal Step B levels. (One set of related grievances was essentially resolved through the arbitration process). As to those grievances resolved at the Formal Step A or Formal Step B levels, the evidence shows that the representatives from both sides were in possession of the records and documents needed to reach a consensus resolution in all cases. In short, whatever delays may have occurred during the early stages of the procedure, the contractual grievance procedure successfully managed to provide the representatives for both sides with the information that was needed to resolve these grievances.⁴

(d) Allegations regarding the Mt. Carmel Station

In the Brief, the General Counsel withdrew the allegations that related to the Janet Porter and Bujalski grievances. I therefore, shall approve the withdrawal of those allegations and move on.

(1) The Emond grievance

Gilbert Emond is a full time letter carrier who, because of a foot injury, was given modified duty at the Mt. Carmel Station. On June 23, 2010, he was notified that there was no more work for him. A letter sent by the Postal Service to him and to the Union stated:

This is notification that the Postal Service has determined that there is no work available for you within the operational needs of the service. This determination is based on a comprehensive review of (1) current operational needs; (2) in

⁴ There was one instance, discussed toward the end of this Decision where a request for information was made in the absence of a grievance. This involved shop steward Vitale and supervisor Joseph.

accordance with ELM 546; (3) your current medical documentation for your work related injury; and (4) a search for assignments within the local commuting area.

5 As a result of this determination, you are being placed into an administrative leave status effective immediately. You will remain in an administrative leave status for your regularly scheduled work days until July 7, 2010.

10 The evidence indicates that an Informal Step A meeting was held between shop steward Kevin Brumleve and supervisor Lisa Millett on July 6, 2010. As it appears that the grievance was not resolved at this step, it was appealed to Formal Step A. However, I am not sure, based on this record, when that appeal occurred. In any event, the dispute involving Emond was whether or not he was sufficiently capable of walking so as to be able to either deliver mail or to work in the facility doing other tasks.

15 The first information request made in relation to this grievance occurred on August 20, 2010. This was made to Lisa Millett and it requests (a) copies of the [TAC] rings for the Mt. Carmel office from 6/24/10 to present [August 20, 2010] and (b) the opportunity to review or download the TAC ring data for those dates.

20 On October 8, 2010 the Respondent reinstated Emond to his former job. There however, was an issue remaining as to any backpay, inasmuch as Emond had used his sick leave and other leave from June 23 to October 8, 2010.

25 By memorandum dated November 23, 2010, from union representative Fruin to the facilities manager, Alejandro Soto, he listed that there were 99 Mt. Carmel pending grievances at Formal Step A ⁵ and that as to the Emond grievance, the information previously requested had not yet been provided. (I am presuming that at this time, the Emond grievance had progressed to Formal Step A and that it was now being handled by Fruin and Soto).

30 On November 30, 2010, Fruin as part of the Formal Step A procedure, made a written request for information regarding the Emond grievance. This asked for (a) mail volume reports, (b) daily schedules and (c) overtime desired lists and NIS lists.

35 On January 4, 2011, the Respondent gave the Union the TAC rings for some of the period of time requested. In this regard, Fruin testified that he asked for and received an electronic version of the TAC ring report on a thumb drive. (If printed out, it would have been more than 1000 pages).

40 On February 18, 2011, Fruin delivered to Soto a list of pending grievances at the Mt. Carmel station at the Formal Step A level. As to the Emond grievance, he indicated that he had not yet received all of the information requested. (He had received the TAC rings for some of the time in question). This additional information was provided on March 3, 2011.

45 The parties agreed to an extension of time on the Emond Grievance and ultimately in September 2011, the grievance was resolved at Formal Step A. In that agreement, the Respondent agreed to pay Emond his wages from June 23 to October 8, 2010 when he returned to work. It also agreed to restore any leave time that he used during the time that had

50 ⁵ This is not as bad as it looks. Most of these grievances were related to a group of grievances regarding express mail and the parties had agreed to hold them in abeyance pending the outcome of a "representative" arbitration case.

been away from work. With respect to this grievance, Fruin testified that ultimately he received all the documents that were requested.

Fruin testified that he needed the TAC ring reports, the overtime desired lists and the daily schedules in order for him to prove that there was work available for Emond and also to determine the amount of backpay to which Emond would be entitled. However, the fact is that the employer never claimed that there was not enough work for Emond to do. Indeed, the facility was if anything, suffering from a shortage of personal.

The only issue in this grievance was the Post Office's claim that due to Emond's physical condition, he was not capable of doing *any* post office work and therefore had to be put on administrative leave. In my opinion, the only information that would have been relevant to Emond's grievance would be information such as doctor's notes that related to his physical condition as of June 23, 2010 and thereafter. All of this other information did not have anything to with that issue and in my judgment was not even remotely relevant to the grievance or any remedy for the grievance. I therefore shall recommend that this allegation of the Complaint be dismissed.

(2) The Express Mail grievances

Article 1, Section 6 of the collective bargaining agreement prohibits performance of bargaining unit work by non unit people except in certain circumstances including emergencies.

What was involved in this situation was a series of multiple grievances where the Union claimed that managerial or supervisory personnel were delivering express mail instead of assigning that work to letter carriers who were in the bargaining unit.

Express mail is a type of mail service that the Postal Service offers to customers who want a guarantee that the article will be delivered on the following day by 3:00 p.m. For this service, the customer pays a premium and the Postal Service guarantees the delivery. Normally, express mail will come into a facility on the evening before delivery or in the early morning on the delivery date. This gives the letter carrier for the route sufficient time to make the delivery. However, in certain limited circumstances, pieces of express mail may come into the post office around noon when the letter carriers are either out in the field or are otherwise unavailable to deliver that mail. In these circumstances, the person in charge has, on occasion, delivered this mail himself in order to meet the deadline. The Union has filed multiple grievances over this practice starting in the beginning of 2010.

At some point in 2010, the Union and the Employer, pursuant to the terms of the collective bargaining agreement, agreed to arbitrate a "representative" case. They also agreed that all other similar cases would be held in abeyance pending the outcome of this arbitration case. That particular case involved eleven instances from February 4 to February 27, 2010 where the Union contended that supervisors or managers delivered express mail between the hours of 12:05 and 2:02 p.m. The hearing took place on December 6, 2010 and an Award was issued on February 25, 2011. Arbitrator John B. Cochran decided the matter against the Union, holding that supervisors in the circumstances, had the right to deliver express mail and that this did not violate the terms of the contract. In part the arbitrator stated:

According to the Union, the Service was required to assign carriers to deliver those late arriving pieces of Express Mail as long as the carriers could made the deliveries by the 3:00 p.m. time commitment. When those Express Mail items arrived, however, each of the scheduled carriers was already working their

routes. Therefore, to have carriers deliver that Express Mail, it would be necessary for management to track down the carriers on their routes have them leave their routes and return to the station to pick up a few pieces of Express mail and deliver those items, before returning to and completing their regular routes... Therefore I am unable to find on this record that the Service violated Article 1, Section 6 when it allowed management personnel at the Mt Carmel Station to deliver thirty two pieces of later arriving Express Mail on eleven dates in February 2010.

Subsequent to this Decision, the Union decided to drop all of the remaining pending cases involving this issue. ⁶

Notwithstanding the fact that the Union had filed numerous other grievances involving the same subject matter and had made numerous requests for documents, data and reports, ⁷ the fact of the matter is that both parties had agreed to hold all of these other grievances in abeyance pending the outcome of the “representative” case. There really was no point in furnishing information during this period of time, even if potentially relevant,⁸ as it had been agreed that all of the other cases would be not be processed until there was a decision in the “representative” case. This was done because the outcome of the “representative” case would likely be determinative of the cases that the parties had agreed to hold in abeyance. Indeed, when the Union lost the arbitrated case, it decided to drop all of the other cases and there obviously was no longer any need for the requested information. As to this set of related grievances, it is my opinion, that the Employer did not illegally withhold information inasmuch as the grievances to which they were attached, had been, by mutual agreement, held in abeyance and it was probable that the information would become irrelevant if the Union lost the “representative” arbitration case. I therefore recommend that the Complaint be dismissed as to these allegations. ⁹

(3) The Grievance Regarding Route Time

The Union and the Postal Service set up what is called a Joint Alternative Route Adjustment Process (JARAP) whereby routes are measured and timed and in some cases additional time is established for certain routes. It seems that in 2010, this body decided to add 3:29 hours of route time into the Mt. Carmel Station instead of adding an additional auxiliary

⁶ There is no suggestion that the Union’s decision to drop these grievances after the arbitrator issued his decision was because of any failure to obtain information from the Employer. Nor was there any suggestion that in arbitrating the “representative” case, that the Union was handicapped by any failure of the Employer to supply relevant information.

⁷ Among the information sought in connection with these grievances were TAC ring reports, express mail labels, express mail scan reports and overtime desired lists.

⁸ There was no dispute that supervisors had delivered express mail on specific dates. The express mail label and scan information would have been relevant to show what and when the items were received at the postal facility. TAC ring reports for the days in question would have been relevant to show who was in the particular facility on the day in question and when they were in the facility or when they were out in the field.

⁹ I should make it clear that I am not recommending that this aspect of the case be dismissed because the underlying resolution of the grievances made the unfair labor practice case moot. I am doing so because the parties themselves had decided to hold off on processing the grievances until after the “representative” case was arbitrated. Given the fact that the parties had a great number of other grievances to deal with, it is my opinion, that it is not unreasonable for either the Employer or the Union to prioritize their grievance handling efforts.

delivery route. The idea was to add a small amount of time to the existing routes and thereby eliminate the need for an additional letter carrier. The agreement was to go into effect on July 31, 2010 and specific routes were assigned additional minutes; all adding up to a total of 3:29 hours per day. In all seven routes were affected.

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It seems that the Mt. Carmel facility failed to put this change into affect on July 31, 2010 and the Union grieved the matter.

10 The evidence indicates that a grievance relating to this issue was initially filed on September 4, 2010 and that an Informal Step A meeting was held in September between Fruin and Camerato. Nevertheless, as shown in General Counsel Exhibit 14, this grievance was withdrawn.

15 The evidence also shows that a grievance on this subject matter was re-filed in February 2011 and that the Informal Step A meeting took place on February 15, 2011. The people involved at this step were Fruin for the Union and John Greco for the Employer.

20 The matter not having been resolved at the first step, a Formal Step A meeting was held on March 9, 2011 between Fruin and Soto. As shown by General Counsel Exhibit 13, the participants reviewed a bunch of documents at this meeting. Therefore, this shows that the Respondent, at least by this date, had complied with the Union' request for information. The exhibit states:

25 The Union's contention is that the employer failed to assign available letter carriers to 3:29 hours of route time on the incident date.... Mail volume Reports show that there was ample mail to be in cases as per the JAEAP agreement on the assigned designated routes... TACS reports show that there were available Letter carriers to perform router time...

30 A Formal Step B meeting was convened and the appeal, with relevant documentation, was sent to Michael Boccio and Charles Page on March 15, 2011. They issued a decision on March 29, 2011 pursuant to which the grievance was resolved in the Union's favor. In the Decision, they assigned one named carrier an additional 1.2 hours pay at the straight time rate and agreed to make further "appropriate adjustments." The Decision lists all of the documents
35 that were part of the grievance file and that were made available to the Formal Step B team. There is no contention that any relevant information was unavailable to the Formal Step B team when they received and reviewed the grievance. Indeed, as far as I can see, there is no indication that any relevant information had not been made available to the Union prior to the Informal Step A meeting that was held on March 9, 2011.

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The record in this case does not indicate why this grievance took so long to get going. Although there seems to have been some discussion between union and management representatives as early as September 2010, the initial grievance was withdrawn and the actual processing of the case through the grievance procedure was not started until February 2011. In
45 any event, if this grievance began its functional life on February 15, its progress to resolution was fairly swift. By no later than March 9, at the Formal Step A meeting, the union's representative had been furnished mail volume reports and TAC ring reports. By March 15, 2011, the Union appealed the grievance to the Formal Step B panel and attached the documentation necessary to resolve the matter. Thus, between February 15 and March 9, there
50 passed 22 days. And the grievance, based on the documentation furnished, was resolved on March 29, which is 42 days after the grievance had been re-initiated.

There is evidence that the Union made requests for information in relation to this grievance in September and November 2010. But at some point in the latter months of 2010, the initial grievance was withdrawn and the parties had a large number of other grievances on their plate. There is no indication that the Union, during the time that this particular grievance was *not* pending, made known to management that it nevertheless wanted the requested information in order to investigate the merits. It is therefore my opinion that until the grievance became active in February 2011, management's neglect to furnish information when the grievance was not in an active state, was not illegal in these circumstances. When the grievance was re-filed and was actively pursued, the representatives of both parties were able, with reasonable dispatch, to assemble all of the information that was necessary to resolve this matter and the grievance was ultimately resolved at the third step of the grievance procedure, only 42 days after it had been initiated.

In the circumstances noted above, I recommend that this allegation of the Complaint be dismissed.

**(4) The Jess Friedman December 17, 2010
Assignment Grievance**

On December 17, 2010, union shop steward Friedman was not given a requested overtime assignment on his own shift and this was made into a grievance. The testimony shows that on this date, the Union orally made a request for certain information in relation to this incident. One request was for the TAC rings in the Hamden Branch on December 17, and the other was for an "updated overtime desired list."

In the Brief, the General Counsel withdrew the allegation that the Respondent failed to furnish the "updated overtime list," thereby limiting the allegation to the failure to timely furnish the Hamden December 17 TAC rings. The evidence shows that the Union renewed the request for the TAC rings on January 5 and 23 and February 23, 2012. In this regard, Brumleve, another union steward, testified that he did not receive all of the requested information from the Employer until around February 23 to 26, 2011.

On March 5, 2011, the grievance was resolved at a meeting between Brumleve and supervisor Greco who had replaced Camerato, the previous supervisor. As a result, Friedman was given an hour of pay at the overtime rate.

In my opinion, the TAC rings for the day that Friedman was not given an overtime assignment was relevant to his grievance as it would show which employees worked at the branch and what hours were worked by Friedman and others during that day. Indeed, there doesn't seem to have been any pushback by the Respondent's agents during the processing of this grievance that the requested information was not relevant.

The original request was made in December 2010 and was followed up by written demands in January, 2011. The information, which in this instance was simple enough to obtain via a computer generated report, was not furnished for at about two months. It therefore is my opinion that the Employer failed to timely furnish this information. To this extent, I think that the Complaint has merit.

**(5) The Jess Friedman December 20, 2010
Assignment Grievance**

On December 20, 2010, Friedman, who normally worked at Hamden, requested that he be assigned to Mt. Carmel route 1871 that had previously been assigned to Janet Porter who had been absent for a considerable time. His request was denied and the route was assigned to another employee, Charles Norris. Friedman's claim was that under the terms of the contract, he had the right to "bump" Norris.

On December 21, 2010, Friedman made a written request for information regarding his own grievance and also for a grievance involving another employee. (Gray-Williams). This request was made to Lillian Joseph. In relation to his own grievance, he asked for the Hamden Daily Board for 12/20/10; Friedman TAC rings for 12/20/10; TAC rings for the carrier[s] on Route 1871 in Mt. Carmel PO on 12/20/10; and the Mt. Carmel PO Daily Board 12/20/10.

On December 23, 2010, Friedman made a second request to Joseph which added additional items. These included a request for the Mt. Carmel Daily Board for 11/23/10 and 12/4/10 and a report of the TAC rings for Charles Norris for 11/24/10 and 12/4/10.

It seems that in the absence of an Informal Step A meeting having taken place, Friedman appealed his grievance to the Formal Step A level and a meeting took place on January 6, 2011. At this step, the respective representatives remanded the grievance to the Informal A step level. The remand notice, (General Counsel Exhibit 28), indicated that this, along with two other grievances, could be revisited after information was provided and if the matter was not resolved at the lower step.

For reasons unknown, it appears that the Informal Step A meeting did not take place. It also appears that the Employer furnished a batch of documents to Friedman on January 20 and 21, 2010 which he then submitted with his appeal to the Informal Step A level. It seems that by January 21, he received all of the information requested and although there was no Informal Step A meeting, this information was submitted to the next step of the grievance procedure in sufficient time for that panel to review and evaluate it.

A Formal Step A meeting was held on January 28, 2010 but the representatives could not agree on a resolution. The grievance was then appealed to Formal Step B.

On February 21, 2011, the Formal Step B panel consisting of Boccio and Page issued a decision in favor of Friedman and the matter was resolved.

The original request was made immediately before the Christmas and New Year holidays. Shortly thereafter, on January 6, 2011, both the union and management representatives agreed to make the information available. It was furnished to Friedman on January 20 and 21 which, in my opinion, is not unduly late. It may be that Friedman viewed his opportunity to review the documents as being limited, but the Union as an entity, had sufficient time to review, before the next step of the grievance procedure, a group of documents that seemed to have been relevant to them in evaluating Friedman's grievance.¹⁰ In this context, I

¹⁰ As Friedman's right to bump Morris is a matter of contract interpretation and presumably based on their relative job positions and seniority, I really do not see the relevance of their respective TAC rings or the Daily Boards at the two facilities on the days in question. There was no dispute that Norris instead of Friedman was given the assignment on the days in question.

do not view the delivery of this information as being untimely. I therefore shall recommend that the Complaint be dismissed in this regard.

(e) Allegations Regarding Hamden

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In the Brief, the General Counsel withdrew the allegations involving (a) the grievance related to the Sandor Nemeth and (b) the snowstorm grievance. I approve these withdrawals and therefore shall not review the evidence relating to those matters.

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**(1) The Loretta Gray-Williams
“Warning” grievance.**

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On December 17, 2010, Gray-Williams received a warning letter relating to an incident that occurred on December 16. In that warning, it was alleged that despite having had her request for additional time to deliver mail on her route (#1410), per a form 3996 submitted by her, she came back with undelivered mail. At the time, she told shop steward Friedman that upon her return to the office, she had filled out Form 1571 and that she came back with the mail because she had been unable to deliver it within the prescribed eight hours.

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On December 18, Friedman requested a number of documents from Supervisor Lillian Joseph. He requested (1) a copy of the form 3996 filled out by all carriers in the Hamden office on December 16, 2010; (2) a copy of the form 1571 filled out by Gray-Williams upon her return to the office on December 16; (3) a MSP scan sheet for route 1410, (her route); (4) the TAC rings for all carriers at the Hamden office on that date; and (5) all information used by management to issue the warning letter.

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Friedman made a second request for his information on December 21. However, he added a number of new items including (1) a copy of the warning letter issued to Gray Williams and (2) the Hamden daily board for December 16, 2010. (The latter request seems to be the work schedule for the day in question.) In addition, Friedman included in this document several other information requests for this grievance which are not in issue in this case, plus requests for other documents related to the previously described Friedman “bumping” issue.

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Not having received an immediate response, Friedman reiterated his information request on December 23. (Two days before Christmas).

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For some reason, Friedman did not initiate an Informal Step A meeting. Instead, he referred the grievance to the Formal Step A level. On January 6, 2011, those representatives, Ken Honore and Sharon Bernardo, agreed to remand the grievance back to the Informal Step A level. They also agreed that the Employer would provide the requested documents to Friedman. Further, they agreed that if the matter was not resolved at the Informal Step A level, the Formal Step A would reconvene in 10 days.

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General Counsel Exhibit 70 is an undated document created some time after January 16 and before January 28, 2011. It shows that Friedman appealed the Gray-Williams warning to Formal Step A and that he enclosed a group of documents including the information he had previously requested. He testified however, that some of the information was provided on the day before or on the last day before the Informal Step A expiration date.

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General Counsel 65 is the Formal Step B decision that was issued by Glenn Chapaton and Cynthia Hall on March 4, 2011. This shows that a Formal Step A meeting was held on January 28, 2011 and that no agreement was reached at that time. It shows that the grievance

was appealed and received at the Formal Step B level on March 1, 2011. The exhibit has a table of contents that shows all of the documentation that was forwarded to the Step B level and there is no indication that the representatives at this level thought that they were missing any relevant information. The upshot was that the warning was revoked and the warning letter expunged from Gray-William's file.

In my opinion, the evidence does not show an unreasonable delay in furnishing this information.¹¹ The initial requests were made on December 18, 21 and 23 and the company and union representatives agreed on January 6, 2011 to furnish the information to Friedman. The evidence indicates that somewhere between January 16 and 28, Friedman was furnished the information. And although he may or may not have had a full opportunity to review the documentation, the information was nevertheless shortly made available to more experienced representatives who had it available to discuss at the next step. (In my opinion, the right to relevant grievance information resides with the Union as an entity and not to any particular representative). At most, any delay was about one month and part of that delay can be attributed the Christmas/New Year holidays. (I do think that Lillian Joseph, who at that time was responsible for mail delivery in an undermanned office, was entitled to a little bit of slack). It therefore is my opinion, that in this respect the Complaint should be dismissed.

(2) The Gray-Williams Overtime Assignment Grievance

The Postal Service has something called an overtime desired list on which letter carriers can place their names if they choose to work overtime during an upcoming quarter. This means that if the employee puts his or her name on this list, she will be given overtime when available, in order of seniority for the persons on the list. It also means that the people on the list has to accept and cannot refuse overtime assignments during the quarter for which they registered.

In January and February 2011, Gray-Williams did not receive overtime assignments and she complained that she had submitted her name via a note, for placement on the overtime desired list for this period.

Representing Gray-Williams, shop steward Friedman, on January 31 and February 1, 2011, requested that management produce the note where Gray-Williams indicated her desire to be on the overtime desired list. He also requested the work assignment list for the first quarter of 2011 and the overtime desired list for that period.

The evidence is that Lillian Joseph conceded to Friedman that Gray-Williams had indeed sent a note indicating her desire to be on the overtime desired list but that she could not find it.

The Union filed a grievance alleging that Gray-Williams was not being assigned overtime despite having placed her name on the overtime desired list. The informal Step A meeting took place on February 9, 2011 between Friedman and Joseph. As noted above, Joseph conceded that Gray-Williams had sent the note and that she should be on the overtime desired list. Therefore, there was no dispute about this fact and any documents to prove the conceded fact was simply redundant and unnecessary.

¹¹ Since both representatives at the January 6, 2011 Informal Step A meeting remanded the case to the lower level with the agreement that the Employer would furnish the requested information, I am not about to second guess their expertise that these documents were relevant to the grievance.

Ultimately, this grievance was resolved on appeal at the Formal Step A level on February 25, 2011 by company representative Bernardo and union representative Honore. This resolution, made less than a month after Friedman initiated the Informal Step A meeting, required that Gray-Williams be given overtime assignments during the relevant quarter. The representatives also agreed on a backpay remedy for her lost overtime. There is no indication that the respective representatives at this level of the grievance procedure lacked any information to resolve the grievance; this not being surprising since the Employer had conceded at the outset that Gray Williams had indeed notified the office of her desire to be on the overtime desired list.

In my opinion there being no dispute about the facts of the grievance, information documenting the undisputed facts was not relevant. Therefore, I shall recommend that this allegation of the Complaint be dismissed.

(3) Forced Overtime Grievance

Union steward Vitale testified that on December 10, 2010, he made a written request for TAC rings for the period from November 8, 2010 to December 9, 2010. (A written report for these TAC rings would have required the printing of about 600 pages). Vitale testified that such a report was necessary because he became aware that management was forcing overtime on employees who were not on the overtime desired list for this quarter.

According to Vitale, when he made this request, Joseph replied that this would be too much paper to print. He also testified that when he asked to use a computer to review the TAC rings, she replied that it would tie up her computer and that she needed it for the day. According to Vitale, Joseph said she would get back to him. Vitale testified that less than a week later, Joseph offered to let him review the TAC rings on an office computer. However, he was unavailable because of his son's hockey game. There also was evidence that Vitale was offered a second opportunity to review the TAC rings on a computer but that Joseph revoked the offer because the office didn't have enough staff to allow Vitale to use company paid time to do this job and to deliver mail at the same time. He never requested another time to review the TAC rings and she didn't offer either. No grievance was ever filed. Further, it is significant that there is no evidence that any employee during the period of time for which the information was requested, complained that he or she was being forced to work overtime despite not being on the overtime desired list.¹²

The simple solution to this problem would have been for Joseph to copy the information from her computer onto a thumb drive and give it to Vitale who could review it on his own time. But neither Vitale nor Joseph seem to have thought of this solution.

In my opinion, the evidence does not establish that Joseph unreasonably withheld this information from shop steward Vitale. It seems clear that she did offer him time to review the information but neither he nor she seems to have been able to make a date. It also seems that

¹² In December 2010, a letter carrier named Bujolski did make a complaint that he was forced to work overtime despite not being on the overtime desired list. A grievance was filed on his behalf and the General Counsel, as part of the original complaint, alleged that the Respondent failed to timely furnish information relating the Bujolski's grievance. However, the General Counsel has withdrawn its allegations that the Respondent violated the Act in relation to the information requests regarding the Bujolski grievance.

Vitale, in the absence of any employee complaints, never pressed the issue and let the entire matter lapse.

Based on these facts, it is my opinion that this allegation of the Complaint should be dismissed.

Conclusions of Law

1. The Respondent violated Section 8(a)(1) & (5) when its management at the Mt. Carmel office failed to timely furnish the TAC ring information in relation to Jess Friedman's December 17, 2010 assignment grievance.

2. The unfair labor practices committed by the Respondent affects commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Respondent has not violated the Act in any other manner encompassed by the Complaint.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The General Counsel requests an Order requiring the posting of a Notice at its main, branch and station facilities in its New Haven, Connecticut Post Office and to send a copy of the Board Order to all of its supervisors at the aforesaid facilities. However, as I have concluded that the Respondent has violated the Act on only one occasion at the Mt. Carmel office, I shall only require that the Notice be posted at that facility. Also, as all of the grievances have been resolved and the information requested is no longer needed to enforce the collective bargaining agreement, I will not require the Respondent to furnish the information that I have found to have been unduly delayed.

On these findings of fact and conclusions of law and on the entire record, I issue the following conclusions and recommended ¹³

ORDER

The Respondent, the United States Postal Service, its officers, agents and assigns shall

1. Cease and desist from

(a) Failing to provide the National Association of Letter Carriers, Merged Branch No. 19 with information relevant to the investigation and processing of grievances or disputes under the terms of the Collective Bargaining Agreement.

¹³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) In any like or related manner interfering with, restraining or coercing employees in the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Mt. Carmel, Connecticut facility, copies of the attached notice marked "Appendix" ¹⁴ Copies of the notice, on forms provided by the Regional Director for Region 34, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2011.

(b) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., April 16, 2012.

Raymond P. Green
Administrative Law Judge

¹⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to furnish in a timely manner, information to the Union information relevant for the administration of the collective bargaining or to investigate and/or to process grievances.

UNITED STATES POSTAL SERVICE

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

A. A. Ribicoff Federal Building and Courthouse, 4th Floor
450 Main Street
Hartford, CT 06103-3022
Hours: 8:30 a.m. to 5 p.m.
860-240-3522.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S

COMPLIANCE OFFICER, 860-240-3006